



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 00217-98

8 September 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] BUPERS, USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 5 Jan 98 w/attachments
(2) Pers-32 memo dtd 26 Mar 98 w/enclosure
(3) Subject's ltr dtd 2 Jun 98 w/enclosure
(4) NPC-311 memo dtd 2 Dec 98
(5) NPC-834C memo dtd 21 Dec 98
(6) NPC-85 memo dtd 22 Dec 98
(7) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected by removing the fitness report for 1 June to 28 September 1989, a copy of which is at Tab A. As indicated at enclosure (2), the Bureau of Naval Personnel (BUPERS) has corrected the ending date of the report, as Petitioner requested, from 28 September 1989 to 20 April 1990. Petitioner further requested removal of her failures of selection for promotion before the Fiscal Year (FY) 98 and 99 Active Lieutenant Commander Line Selection Boards, so as to be considered by the selection board next convened to consider officers of her category for promotion to lieutenant commander as an officer who has not failed of selection to that grade. Because of the failures of selection for promotion, she was involuntarily discharged on 31 December 1998. She accepted a commission in the Naval Reserve on 1 January 1999.

2. The Board, consisting of Messrs. Caron, Hogue and Neuschafer, reviewed Petitioner's allegations of error and injustice on 2 September 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner alleges that the comment, in the contested fitness report, about her relationship with another crew member was inappropriate. Initially, she further alleged that BUPERS had adjudicated the matter in her favor. She provided a statement from the reporting senior, the commanding officer of the ship where she received the contested fitness report, to the effect that he fully supported removing the report.

c. In correspondence attached as enclosure (2), the BUPERS office having cognizance over fitness report matters reported that they had changed the ending date of the contested fitness report as Petitioner requested. They stated that they had been unable to verify resolution or adjudication of any charges which may have been brought against her, and that her petition did not include documentation of such adjudication. They recommended retention of the report, but added that should Petitioner prove adjudication of the matter referenced in the narrative of the report, they "...would have no objection to change of the report or removal as requested."

d. Enclosure (3) is Petitioner's response to the BUPERS advisory opinion at enclosure (2). She provided a statement from a Navy judge advocate who says he was sent to Petitioner's ship to assist with a case involving officer misconduct; that the commanding officer awarded Petitioner nonjudicial punishment (NJP) on charges of inappropriate personal behavior; and that the appeal authority, for whom he was the staff judge advocate, overturned the NJP.

e. In correspondence attached as enclosure (4), the office having cognizance over fitness report matters reconsidered Petitioner's case and recommended that the contested fitness report be removed and replaced with a memo. They commented that her submission at enclosure (3) proves the report to be in error.

f. In correspondence attached as enclosure (5), the Navy Personnel Command (NPC) office having cognizance over personnel performance and security commented that they could make no comment or opinion regarding Petitioner's request to remove the contested fitness report. They stated a search of their files and review of the portion of Petitioner's official record under their purview revealed no evidence of misconduct.

g. In correspondence attached as enclosure (6), the NPC office having cognizance over active duty promotions has commented to the effect that Petitioner's request to remove her failures of selection for promotion should be disapproved. They stated that "Based on the modifications of [Petitioner's] record addressed in [enclosure (4)], the overall quality and competitiveness of her record does not substantially improve amongst her peers."

h. Petitioner was considered by the FY 00 Naval Reserve Line Lieutenant Commander Selection Board, convened on 14 June 1999. The results of that promotion board are not yet available.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested fitness report.

In finding that the contested fitness report should be removed, they particularly note the favorable advisory opinion at enclosure (4), as well as the reporting senior's statement supporting removal of the report.

They concur with the opinion at enclosure (6) in finding that Petitioner's FY 89 and 90 failures of selection should not be removed. Since they find these active duty failures should stand, they have no grounds to set aside her discharge. Should she fail of selection by the FY 00 Naval Reserve Line Lieutenant Commander Selection Board, before which her record included the contested fitness report to be removed, she may submit a new application seeking removal of that failure of selection.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
Undated	 USN	89Jun01	90Apr20

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

W. Dean Pfeiffer
W. DEAN PFEIFFER
Executive Director

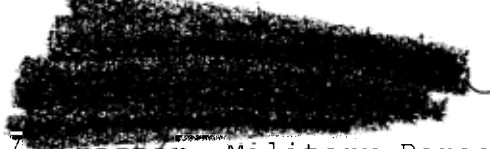
IN REPLY REFER TO
1610
Pers-32
MAR 26 1998

Subj: FRANKLIN D. BORN, USN

c. The member alleges the comment of her relationship with another crew member is inappropriate as BUPERS adjudicated the matter in her favor. Liaison with Pers-834C1/82111 [REDACTED] revealed their files do not go beyond 1995 and that they are unable to verify resolution or adjudication of any charges which may have been brought against the member. The member does not include documentation of her adjudication with her petition.

d. The member alleges the ending date of the report to be in error. Review of the member's assignments and continuity of reports revealed the end date of the report should be 20 April 1990 vice 28 September 1989. We are administratively correcting the ending date by filing a memo in the member's headquarters record. We are also correcting the end date of the member's temporary duty assignment as reflected in block 28. Enclosure (2) is forwarded for you information and use.

3. We recommend retention of the report; however, should the member prove adjudication of the matter referenced in block 88 of the report, we would have no objection to change of the report or removal as requested.

A large, dark, irregularly shaped redacted area, likely covering a signature or name.


Director, Military Personnel
Evaluation & Correspondence
Division

BCNR 1079 217-98

MEMO

NAVPERS 1616/23

(Rev 5/97)

FITNESS REPORT/ENLISTED EVAL MEMORANDUM ENTRY	3/24/98 <i>JP</i> Examiner's Date Stamp & Initial	0-3 E-35
Name: <i>[REDACTED]</i> F.	Grade/Rate: <i>ENS</i>	<i>[REDACTED]</i>
PERIOD OF REPORT FROM <i>89JUN01</i> TO <i>89SEP28</i>		
This memorandum applies to the section checked below:		
<p><input checked="" type="checkbox"/> Change dates of report to read: FROM <i>89JUN01</i> TO <i>90APR20</i></p> <p><input checked="" type="checkbox"/> Change block <i>28</i> to read: <i>TDY 30 SEP 89 - 20 APR 90</i></p> <p><input type="checkbox"/> This memo entry corrects continuity gap. In view of the member's status (leave, transit, inactive duty, under instruction, etc.,) during the period noted above no report for this period was prepared.</p> <p><input type="checkbox"/> This memo entry corrects continuity gap. No report for the period can be obtained.</p> <p><input type="checkbox"/> Report was received without the signature of () member; () reporting senior. It was returned for signature, but no response was received.</p> <p><input type="checkbox"/> Other</p>		
<div data-bbox="784 1560 1060 1665" style="text-align: center;"></div> <p style="text-align: center;">Technical Asst. BCNR Liaison</p>		

2 June 1998

To: Board for Correction of Naval Records

Attn: Board Performance Section

From: [REDACTED]

Subj: Additional information re Docket No 00217-98.

Sirs,

Enclosed is a copy of a statement made [REDACTED]. He was Staff Judge Advocate General at the time that my case was handled by COMLOGGRU-1. Please inform me if additional information would be required to decide the case in my favor. If this is the case, please advise me as to the correct procedures for presenting my case again when additional evidence is available to me.

Very Respectfully,

[REDACTED]

LT USN

[REDACTED]

WAM

JUN 11 1998

With [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

I, [REDACTED], do solemnly swear that the following is a true and accurate statement:

During the Fall of 1989, I was the Staff Judge Advocate for Commander, Combat Logistics Group 1. During PACEX 89, I was sent onboard USS Flint to assist with a case involving officer misconduct. The Commanding Officer awarded non-judicial punishment to Ensign [REDACTED] on charges stemming from allegations of inappropriate personal behavior. Upon returning to my duty station at the group, the case was appealed to RADM [REDACTED] the Commander, Combat Logistics Group 1. As reflected by the MCM, Part V, a non judicial punishment may only be appealed for two reasons, the first being that the punishment was disproportionate to the offense, and the second being that the punishment was unjust (specifically, that the accused is innocent). In acting on the appeal, [REDACTED] did not lessen the punishment awarded by the Commanding Officer USS FLINT, but rather overturned the entire non-judicial punishment proceeding. After the reversal, Ensign [REDACTED] was assigned to work in my office, and performed in an exemplary manner, accomplishing tasks usually reserved for persons of more senior rank and experience.

These facts are true and correct to the best of my recollection at this point in time. In the event further information is needed, I will attempt to access the records from COMLOGGRU 1 to refresh my memory.

[REDACTED] the undersigned officer, do hereby certify that the foregoing instrument was subscribed and sworn to before me on this 5th day of May, 1998, by [REDACTED], 444-56-4349, whose current duty station is Naval Training Center, Great Lakes, IL, and who is known to me to be a person serving with the U.S. Armed Forces. And I do further certify that I am at the date of the certificate a commissioned officer of the grade, branch of service, and organization stated below, in the active service of the United States Armed Forces, that this certificate is executed by me in that capacity, and by statute no seal is required.

[REDACTED]
[REDACTED]
Naval Training Center
Great Lakes, IL 60088

217-98



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
NPC-311
2 DEC 98

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: [REDACTED]

Ref: (a) Pers-32 Memo dated 26 March 1998

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests reconsideration of her request to remove her fitness report for the period 1 June 1989 to 20 April 1990.

2. Based on our review of the material provided, we find the following:

a. Reference (a), recommended the fitness report for the period 1 June 1989 to 20 April 1990 be changed or removed provided that the member could prove her case was adjudicated.

b. We have reviewed the additional material submitted by the petitioner in her letter of 2 June 1998.

c. The member proves the report to be in error.

3. In view of the above, we recommend removal of the fitness report for the period 1 June 1989 to 20 April 1990 and replace it with a memo.

[REDACTED]

Head, Performance
Evaluation Branch

217-98



**DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000**

IN REPLY REFER TO
1420
Ser 834C/1223
21 Dec 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: [REDACTED] US [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB/NPC-00ZCB of 9 Dec 98

Encl: (1) BCNR file 00217-98 w/Service Record

1. Reference (a) requested information concerning removal of subject naval officer's fitness report subsequent to her successful appeal of nonjudicial punishment (NJP). Enclosure (1) is returned as a matter under the purview of BCNR.

2. A search of NPC-834 historical files and a review of the portions of [REDACTED]'s official service record under NPC-83 purview reveals no evidence of misconduct. Accordingly, NPC-83 can make no comment or opinion relative to LT Boyer's petition.

[REDACTED]
Captain, U.S. Navy
Director, Personnel Performance &
Security Division (NPC-83)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

217-98

5420

Ser 85/356

22 Dec 98

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] LT KIMBERLY L. BOYER, USN [REDACTED] 000

Ref: (a) NPC-311 1610 memo of 2 Dec 98

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LT [REDACTED] request for removal of her failure of selections from the FY98 and FY99 Active Lieutenant Commander Line Promotion Selection Boards.

2. Based on the modifications [REDACTED] record addressed in reference (a), the overall quality and competitiveness of her record does not substantially improve amongst her peers. Therefore, recommend [REDACTED] request for removal of her failure of selections be disapproved.

[REDACTED]
[REDACTED]
[REDACTED]
BCNR Liaison, Officer Promotions and
Enlisted Advancements Division